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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 20-12345-scc

Adv. Case No. 20-01227-scc

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In the Matter of:

THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

Debtor.

- - - - - x

THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,

Plaintiff,

v.

ARROWOOD INDEMNITY COMPANY, et al.,

Defendants.

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United States Bankruptcy Court
One Bowling Green
New York, NY 10004

December 9, 2020
10:01 AM

B E F O R E :
HON SHELLEY C. CHAPMAN
U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

1 HEARING re Omnibus Hearing

2
3 HEARING re Doc #7 Debtor's Motion For Entry of Interim and
4 Final Orders (I) Authorizing the Continued Use of the
5 Debtor's Cash Management System, Bank Accounts and Business
6 Forms and (II) Granting Related Relief

7
8 HEARING re Doc #192 Debtors Motion For Entry of an Order (I)
9 Authorizing the Debtor to Continue Its Gift Annuity Program;
10 (II) Pay and Honor Obligations Related Thereto and (III)
11 Granting Related Relief.

12
13 HEARING re Doc #187 Application to Employ Nixon Peabody LLP
14 as Special Counsel

15
16 HEARING re Doc #181 Application to Employ Burns Bowen Bair
17 LLP as Special Insurance Counsel

18
19 HEARING re Doc #182 Application to Employ Berkeley Research
20 Group, LLC as Financial Advisor

21
22 HEARING re Doc #201 Application to Employ Dr. Jon R. Conte
23 as Expert Consultant

1 HEARING re Doc #174 Motion of the Debtor For an Order
2 Establishing Deadlines For Filing Proofs of Claim and
3 Granting Related Relief
4

5 HEARING re Adversary proceeding: 20-01227-scc The Roman
6 Catholic Diocese of Rockville Centre, Ne v. Arrowood
7 Indemnity Company et al

8 Doc #13 Official Committee of Unsecured Creditors Motion to
9 Intervene in Adversary Proceeding
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11 Doc #202 Application to Employ Kinsella Media, LLC as Expert
12 Consultant
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25 Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning, everyone. This is Judge Chapman. We're here this morning for a hearing in the Roman Catholic Diocese of Rockville Center case, Case Number 20-12345. This hearing is being conducted entirely telephonically via the Court Solutions platform, and a recording is being made of the proceedings. I have a roster of a large number of people who have registered to participate today. Please identify yourself for the record when you speak and identify the party on whose behalf you are speaking and please do so each time that you speak. Who would like to start on behalf of the Debtor?

MR. ROSENBLUM: Good morning. Benjamin Rosenblum from Jones Day on behalf of the Debtor.

THE COURT: All right.

MR. ROSENBLUM: Your Honor --

THE COURT: Go ahead.

MR. ROSENBLUM: Your Honor, today on the agenda, we have a number of uncontested matters, a status update on the bar gate process. And then an insurance adversary case, there's a contested matter between the Committee and certain of the insurers. And if it's okay with the Court, I would just hop right into the agenda with the uncontested matters.

THE COURT: All right. That sounds good. Thank you.

1 MR. ROSENBLUM: Thank you, Your Honor. Your
2 Honor, number one on the agenda is the Debtor's cash
3 management motion. We had received some comments from both
4 the United States Trustee and the Official Creditors
5 Committee. We were able to report -- we were able to
6 resolve those comments. And they are reflected in the
7 revised proposed form of order that is attached to
8 certificate of no objection at Docket 228. In addition,
9 there are certain things that we had agreed to that are not
10 reflected in the proposed form of order, which I'd like to
11 put on the record quickly.

12 As part of the discussions with the Committee to
13 reach a consensual cash management agreement, the Debtor and
14 the Committee have agreed on certain reporting that the
15 Debtor will provide to the Committee's financial advisors as
16 a supplement to the MOR. The Debtor will provided detailed
17 cash receipts and disbursement data in Excel format for the
18 main administrative office's operating account and the main
19 PSIP operating account to the financial advisors as a
20 supplement to the MOR. The Committee's financial advisor
21 will be able to request specific details, the batch receipt
22 transactions, if needed. The receipt and disbursement
23 activity from the restricted accounts, the Committee's
24 financial advisors will review the information provided in
25 the monthly operating report for the next one or two months

1 to develop an appropriate protocol to address any additional
2 detailed reporting requests related to restricted accounts
3 should the need arise. And the Debtor and the Committee
4 agree to work together thereafter with respect to the
5 appropriate reporting of all parties rights being reserved
6 subject to further written agreement.

7 So with the revised proposed form of order, the
8 language included there and with the statement that I just
9 read on the record, the cash management motion, the -- on a
10 final basis is uncontested. And I'm happy to walk through
11 the changes to the order or if the Court should
12 (indiscernible) the order, we would respectfully request
13 that it be entered in the revised form.

14 THE COURT: All right. Very well. Thank you. I
15 do see someone from the office of the United States Trustee
16 on the line. Is there anything that you would like to add?

17 MR. ZIPES: Good morning, Your Honor. Greg Zipes
18 with the U.S. Trustee's Office. I have nothing to add, and
19 our issues have been resolved.

20 THE COURT: Excellent. And anyone from the
21 Committee wish to add anything?

22 MS. DINE: Your Honor, it's Karen Dine from
23 Pachulski Stang Ziehl and Jones on behalf of the Official
24 Committee of Unsecured Creditors. I have nothing to add,
25 that that's a representation -- an appropriate

1 representation of our resolution of any issues we had.

2 THE COURT: All right. Excellent. Thank you so
3 much. So with that, the motion for approval of the
4 continued use of the cash management system and related
5 relief will be approved on a final basis. At the conclusion
6 of the hearing, I would ask, as I always do, that you send
7 copies of the orders in Word version to our chambers. Okay.
8 So what's next?

9 MR. ROSENBLUM: Your Honor, Item 2 of the agenda
10 is Debtor's gift annuity motion. This motion is --
11 effectively a comfort order to continue to comply with the
12 Debtor's obligations under New York law with respect to its
13 gift annuity problem. So this involves -- these arise out
14 of perpetuity contracts, but it's basically donors provide
15 a -- purchase an annuity from the Debtor. And then the
16 Debtor pays out over the course of -- over the duration of
17 the annuity, and then upon the death of the donor, it will
18 go to either the Diocese or a designated charitable
19 institution. This is -- this is small dollars. It's kind
20 of --

21 THE COURT: Right.

22 MR. ROSENBLUM: -- quarterly basis -- it's \$20,000
23 to -- I think the average annuitant is 87 years old. And
24 there's no objections to the motion. We believe we're
25 compelled to do it under New York insurance law. And if

1 there is an annuitant who passes during the case, there is a
2 notice period to the Committee in case there are any issues
3 with respect to whether payment is appropriate or anything
4 of that nature. So unless the Court has any questions, we
5 believe that this is -- this relief is appropriate and
6 important for the Diocese's charitable mission.

7 THE COURT: All right. All right. Does anyone
8 else -- this is fairly straightforward, and your papers lay
9 it out all very, very well. But for the sake of good order,
10 let me ask if anyone wishes to be heard with respect to the
11 Debtor's motion for an order authorizing the Debtor to
12 continue its gift annuity program. Okay. Very well. That
13 will be approved as well. Now, we get to the hard stuff.

14 MR. ROSENBLUM: Okay. Your Honor, this is Item 3
15 of the agenda is the Debtor's application to retain Nixon
16 Peabody as special counsel. Nixon Peabody was originally
17 slated as an ordinary course professional for the Debtor.
18 They're on our OCP list, but it is possible that during the
19 course of the case, they will exceed the OCP threshold. But
20 Nixon Peabody has a, I think, two-decade relationship with
21 the Diocese and provides ordinary course legal services,
22 including advising and providing services in connection with
23 the Debtor's historical and ongoing government and internal
24 investigations and reporting obligations to law enforcement.

25 We have folks on the phone from Nixon Peabody to

1 address the Court's questions. But I think our -- the
2 retention application for, you know, Nixon Peabody explains
3 what they're doing and why the Debtor believes it's
4 important for them to continue to do services.

5 THE COURT: Yeah. When I -- when I alluded to the
6 difficult things, I was not talking about the retention.
7 None of the retentions that you have on the agenda for this
8 morning are contested. I think for the Nixon Peabody one,
9 though, I don't believe we've seen a certificate of no
10 objection, correct?

11 MR. ROSENBLUM: That's correct, Your Honor. There
12 is no objection, but we did not file a certificate of no
13 objection, and I think that was just an oversight. But I
14 can represent that there have been no objections, formal or
15 informal to this retention application.

16 THE COURT: All right. No problem. Then for the
17 sake of good order, let me ask if anybody wishes to be heard
18 with respect to the Debtor's application to employ Nixon
19 Peabody as special counsel to the Debtor. All right.
20 Excellent. Thank you. That'll be -- that'll be approved as
21 well. And as we've discussed, there are, I believe,
22 counting them now, one, two, three, four other retentions
23 for which you have filed certificates of no objection, and
24 we will enter those after the hearing, unless you have
25 something more you'd like to add with respect to those.

1 MR. ROSENBLUM: No, Your Honor. Those are the
2 Committee's retention applications --

3 THE COURT: Yes.

4 MR. ROSENBLUM: -- not object to them. And we had
5 worked out some language with the Committee on the Kinsella
6 Media and Conte retention applications that is reflected in
7 the revised proposed form of order. So the Debtor does not
8 -- the Debtor doesn't have anything further with respect to
9 those -- the Committee's retention applications.

10 THE COURT: All right. Ms. Dine, I didn't mean to
11 steal your thunder, if you would like to formally present
12 these, that's fine. But since we had the certificates of no
13 objection, I thought we could just move forward.

14 MS. DINE: Your Honor, it's Karen Dine again from
15 the Pachulski Stang Ziehl and Jones on behalf of the
16 Committee. And that would be fine, and we appreciate Your
17 Honor taking those under consideration and entering them.

18 THE COURT: All right. All right. Very well.
19 Thank you. Okay. What shall we do next?

20 MR. ROSENBLUM: Your Honor, for the status
21 conference on the bar date motion, my partner Mr. Geremia
22 will be taking that up as just an introduction to his
23 comments. I think that we have worked out a process for
24 teeing up the bar date motion, which is contested, and Mr.
25 Geremia will get into that. As a heads-up, I don't -- it is

1 not for today. But we have started to speak with Committee
2 about whether a mediation process for -- what I think of
3 sort of the midcase issues would make sense. So that's not
4 for today, those conversations are in their infancy. But I
5 did want to put that on the Court's radar by way of
6 introduction to Mr. Geremia's presentation.

7 THE COURT: Is there a -- is there a connection to
8 the possibility of that process to the resolution of the
9 issues around the bar date?

10 MR. ROSENBLUM: From the Debtor's perspective, we
11 think that there may be -- there may be benefit to mediating
12 some of the issues around the bar date, Your Honor, yes.

13 THE COURT: Okay. All right. So, Mr. Geremia,
14 I'd like to hear from you.

15 MR. GEREMIA: Good morning, Your Honor. Todd
16 Geremia for the Debtor. In connection with the Debtor's
17 application to set a bar date, we had the guidance from your
18 court that -- to -- you approved the request to adjourn the
19 Debtor's reply deadline to a date to be determined. We have
20 worked with the Committee upon an agreed-upon schedule for
21 the remaining process on the bar date motion. And that is --
22 - it's a streamlined schedule, and it is as follows. Any
23 experts that the Debtor proposes to use in connection with
24 this application would be -- their declarations would be
25 served upon the Committee by December 21st. Depositions of

1 all experts disclosed by the parties in connection with this
2 motion would take place between December 28th and January
3 8th.

4 The Debtor's reply, which will also address any
5 evidentiary issues with the Committee's experts, that is to
6 say there will be no separation motions in limine, Daubert
7 motions or motions to strike experts. All those experts
8 will be addressed, and their evidentiary use will be
9 addressed in the Debtor's reply, will be submitted by
10 January 11th at 5:00 p.m. And we propose that our page
11 limit be extended to 30 pages, which we hope not to use all
12 of that, but just have a limit of 30 pages to address those
13 evidentiary issues. And that a hearing would take place on
14 January 14th. And that we would propose to present Your
15 Honor an order of presentment unless you would like to
16 proceed in a different manner.

17 THE COURT: Let me try to -- let me make sure I
18 understand. You're focusing in on -- I separated the bar
19 date issues into two buckets, so to speak. One is the
20 timing issue, which is the primary issue, I'll say being
21 prosecuted by the Committee. And the other set of issues
22 has to do with the information that needs to be provided on
23 the proof of claim, and that's being pressed by the insurers
24 with the opposition of the Committee. So the schedule that
25 you're talking about pertains to both or it pertains only to

1 the deadline issue?

2 MR. GEREMIA: It pertains to the deadline issue.
3 And also there are a series of issues that the Committee has
4 raised that don't go to proof of claim, but go to the type
5 of notice that will be served. And those are issues --

6 THE COURT: Yes.

7 MR. GEREMIA: -- that include that we, you know,
8 we have some prospect of working out with the Committee and
9 hoping to narrow or eliminate on that second bucket of
10 issues.

11 THE COURT: Okay.

12 MR. GEREMIA: An issue where there's likely to be
13 a dispute is setting of the actual bar date. So, from our
14 perspective, there's those two --

15 THE COURT: Okay.

16 MR. GEREMIA: -- buckets addressed.

17 THE COURT: Okay. I mean, I share your optimism
18 that just as we did at the very, very beginning of the case
19 when we talked through more expansive and effective means of
20 notice to the survivor population, I'm confident that you
21 will be able to work those out. Otherwise what you say,
22 sounds fine. With respect to the objections of the
23 insurers, what are you contemplating with respect to
24 resolving that? It may not surprise you that I have some
25 preliminary thoughts. I don't want to ambush anyone, but

1 I'd like to know. I always would like to narrow the issues
2 as much as possible.

3 MR. GEREMIA: Sure. I think that the issues with
4 respect to the insurers, it may be principally an issue as
5 between the Committee and the insurers. And those, I
6 believe, can be continued to be worked on in advance of the
7 January -- the proposed January 14th hearing date.

8 THE COURT: All right. Well, I'll let that
9 process play out. But just -- well, I'll leave it at that
10 for now. Those issues ought to be resolved fairly handily
11 as far as I'm concerned. All right. Then is anything else
12 --

13 MR. GEREMIA: Thank you, Your Honor. That's all
14 we have on that.

15 THE COURT: All right. Ms. Dine, was there
16 anything you wanted to add to that?

17 MS. DINE: Your Honor, I don't have anything. I
18 don't know whether Mr. Stang wanted to make any comments.

19 THE COURT: Sure. Mr. Stang? I'm trying to see
20 if he's on my screen, Ms. Dine. I don't see him. I think -
21 -

22 MR. STANG: (Indiscernible.)

23 THE COURT: Oh, there he is. There he is. Hello,
24 Mr. Stang, how are you?

25 MR. STANG: Good morning, Your Honor. Your Honor,

1 we have regular conference with Debtor's counsel to discuss
2 issues. And the bar date issue, obviously, has been the
3 subject of those discussions. We have repeatedly offered to
4 the Debtor to consult with Dr. Wheatman from the Kinsella
5 firm regarding the type of notice program. And we hope the
6 Debtor will soon take us up on that because in other cases,
7 where we've used Dr. Wheatman, the Debtors have found her
8 services to be helpful, and we've reached consensual
9 noticing programs.

10 As to mediation, while many of the church cases
11 around the country have had mediators, we didn't feel that
12 we needed one in this stage of the case. We have these
13 regular calls with the Debtor. We believe they're
14 constructive. The Debtor is pushing hard for the timing of
15 this bar date. And if we actually engaged in mediation
16 regarding the bar date, we would probably be at the date
17 that the Committee's asking for. So we're not saying that
18 mediation is an unacceptable way -- unacceptable means of
19 trying to resolve authority issues in this case, but on this
20 one, we just didn't see the necessity for it. But the
21 schedule laid out by counsel is correct. And we look
22 forward to trying to reach a consensual resolution of both
23 the Debtor's issues and the insurance company's issues.

24 THE COURT: All right. Well, I'm going to let the
25 process play out a little longer. I am not sure about the

1 utility of mediation, you know, midcase as was said. I
2 think that I'm perfectly capable and would like to have a
3 lot of input into the resolution of those issues. Even
4 though the -- this is not a hearing, perhaps, it would be
5 fruitful for me to share my view that -- at least with
6 respect to the extra information that the insurance carriers
7 would like to be provided. My tentative view on that is
8 that that's not something I think is appropriate for a proof
9 of claim. It's in the nature of an interrogatory. This is
10 not a complex, you know, proof of claim related to a complex
11 financial instrument where a lot of information is required.
12 So I would encourage the parties to not spend a lot of time
13 arguing over that one. Again, this is not a hearing on it.
14 Those are my preliminary thoughts. But they're rather
15 strong preliminary thoughts, and I'm offering them to you to
16 provide some guidance to the process.

17 With respect to the setting of the date, the
18 earlier that's requested by the Debtor versus the CBA
19 deadline, I'm not going to comment on that now. I'll let
20 that process play out a little more, but I'll only say that,
21 again, that's something that I think I ought to be able to
22 decide after a hearing if you can't get there. But as a
23 general matter, I'm always open to mediation, I'm just not
24 sure this is the right spot for that.

25 All right. So unless anyone else has anything to

1 say on that, what shall we talk about next?

2 MR. ROSENBLUM: Your Honor, this is Benjamin
3 Rosenblum from Jones Day on behalf of the Debtor. I think
4 that moves us to the contested matter for today, which is
5 the Committee's motion to intervene, so I would -- I would
6 turn that over to Committee counsel.

7 THE COURT: All right. Thank you very much. All
8 right. Is that you, Mr. Stang, or you, Ms. Dine?

9 MR. STANG: Actually, Your Honor, the Debtor has
10 special insurance counsel, Mr. Bair is on the phone. And he
11 would be arguing the motion on behalf of the Committee.

12 THE COURT: All right. There you are. Hello, Mr.
13 Bair. Good morning.

14 MR. BAIR: Good morning. Good morning, Your
15 Honor. Yes, this is Jesse Bair from Burns Bowen Bair,
16 special insurance counsel for the Official Committee of
17 Unsecured Creditors. And if it would please the Court,
18 we're happy to go forward with a discussion of the motion or
19 if Your Honor has any questions at the outset, we're
20 certainly happy to answer those straight away.

21 THE COURT: I've read the papers. And basically
22 there are two sets of objections. The objections largely
23 seek to either preclude the Committee from intervening or
24 limit, somehow limit the Committee's participation in the
25 case. And, I mean, perhaps, it's best for me to go right to

1 the counsel for the insurers because I don't see any basis
2 for denying the Committee's motion to intervene. And the
3 proposed limitations that I saw, I believe it was in the
4 Lloyd's objection or the LMI response. Frankly, doesn't
5 make any sense to me. Under applicable Second Circuit law,
6 the Committee has a right to intervene. Even if the
7 Committee didn't have an absolute right to intervene, I can
8 think of no stronger case in which it's appropriate for the
9 Committee to intervene in this adversary proceeding.
10 They're entitled to participate. They're entitled to access
11 to information. That's the way we're going to get through
12 this.

13 So I'm happy to hear from counsel to the objecting
14 parties, if you think there's something that I'm missing in
15 your papers. But my inclination, having read everything, is
16 that the Committee's motion to intervene should readily be
17 granted.

18 MR. COUGHLIN: Your Honor.

19 THE COURT: Yes.

20 MR. COUGHLIN: This is Kevin Coughlin from
21 Coughlin Duffy. We represent Arrowood. We were the prime
22 objector. I recognize Your Honor's comments. We recognize
23 the scope of the Second Circuit's decision in Caldor. But
24 what we wanted to bring to the Court's attention here is
25 what we consider to be rather unique circumstances, that as

1 far as we could tell on all the decisions in the Second
2 Circuit citing Caldor have never addressed, and, in fact, we
3 could only find one case in the country, and that that's
4 Northern Diocese of Alaska case that dealt with this. But
5 it's -- it's sort of previewing a real problem that is going
6 to come home to roost in this case.

7 And it starts with the fact that Plaintiffs
8 lawyers are being called the Unsecured Creditors Committee
9 for purposes of this bankruptcy proceeding. And we
10 recognize the Second Circuit's decision with committees of
11 this nature. However, in every case that we've looked at,
12 the Unsecured Creditors Committee had a cause of action, a
13 right outside of the bankruptcy if it hadn't occurred that
14 they could have protected and filed litigation.

15 And, in this case, New York State law does not
16 recognize the Plaintiffs as a third-party beneficiary or any
17 kind of beneficiary with respect to the alleged liability
18 policies here. And, therefore, Your Honor, there -- they
19 really don't have standing. We recognize your comments.
20 I'm not going to argue that point. But there is a very
21 large practical problem that's going to loom.

22 THE COURT: What is -- what is the practical
23 problem? The Committee is not --

24 MR. COUGHLIN: Here is --

25 THE COURT: Excuse me. The Committee, as a result

1 of being an intervenor, is not going to obtain a cause of
2 action or a judgment or anything of nature which it does not
3 have. You're quite correct on that. The Committee is the
4 vehicle for the representation of, at this point, uncounted
5 individuals who would be -- have a right to intervene. This
6 is nearly an efficient procedural mechanism for the
7 Committee on behalf of its constituents, the victims, to
8 participate.

9 MR. COUGHLIN: Well, that's a perfect --I'm sorry
10 -- go ahead, Your Honor. I apologize.

11 THE COURT: The denial of their intervention
12 motion would simply lead to a request by the Committee for
13 them to have the same access to information and other events
14 in the prosecution of this case that they would be entitled
15 to as intervenors. My giving them intervenor status --
16 excuse me -- does not give them a substantive right to which
17 they aren't otherwise not entitled. And if you want to --
18 if you want to put a lawyerly for the avoidance of doubt
19 proviso in the order, I would ask the Committee and the
20 Debtor to entertain that. But, in my view, you're -- you're
21 seeing -- you're creating a problem that's just not there.

22 MR. COUGHLIN: Well, I appreciate that comment,
23 Your Honor. But you're actually -- you've actually given me
24 a great segue because here's the actual problem. For over
25 two years now, we have been seeking information from the

1 Debtor related to the diocese's practices with respect to
2 pedophilia, abusive priests, and information going back in
3 time on those topics, and they've refused to give us that
4 information. And as we --

5 THE COURT: What does that have to do with the
6 right of the Committee, newly formed in connection with this
7 case, have to do with the Debtor's cooperation or not with
8 your requests?

9 MR. COUGHLIN: Well, here's where it comes and
10 intersects because we're going to be seeking, in this
11 adversary proceeding, that kind of information. The Diocese
12 has objected to giving us that information for almost two
13 years, saying they don't want to give us to us because they
14 don't want to have to turn it over to the Plaintiffs. And
15 the problem with that information, in the context of
16 insurance, Your Honor, is that if that information turns out
17 to be harmful to the Debtor, with respect to their knowledge
18 going back in time, that affects the amount of insurance
19 they might be able to recover. It's a standard relevant
20 topic that is undertaken in discovery in all of these cases.

21 The Plaintiffs, on the other hand, have a -- have
22 a desire to get their hands on that information and use it
23 to drive up values of case -- of the cases. And so what you
24 have, you're going to have both of those things playing out.
25 And at --

1 THE COURT: Can --

2 MR. COUGHLIN: I'm sorry.

3 THE COURT: You're -- you're (sound drops).

4 MR. COUGHLIN: I'm sorry, Your Honor, if you're
5 speaking, you've broken up here.

6 THE COURT: No. I'm sorry. Unfortunately, where
7 I'm -- where I am, there's construction going on. Could you
8 give me a moment, please.

9 MR. COUGHLIN: Sure.

10 THE COURT: I'm going to try and find another
11 location.

12 MR. COUGHLIN: Sure.

13 THE COURT: I'm just -- there is no -- I hear what
14 you're saying. I hear the words, you know, but it has
15 literally nothing to do with the -- indeed the necessity and
16 the efficiency of the Committee being an intervenor in this
17 case. This case is about the victims. That's what it's
18 about. So as this case proceeds, and as the Debtor, and it
19 will cooperate with appropriate requests for information.
20 To the extent that there is a need for a protective order of
21 some kind, which I'm not suggesting it is appropriate or
22 not, we will deal with it then.

23 But the concept that information will -- your
24 words "drive up the settlement value," this case is going to
25 settle appropriately based on a whole host of factors. And

1 the participation of the Committee, on behalf of the
2 victims, is crucial. So I find nothing -- nothing that you
3 have said to convince me that there's any basis for denying
4 the Committee's right to intervene. As and when there are
5 protective order issues or other issues that are of concern
6 to you, I'd be more than happy to hear from you. But in
7 terms of cutting off the Committee's right to intervene, I
8 can't think of a stronger case for intervention than this
9 one.

10 MR. COUGHLIN: I understand, Your Honor. May I
11 ask one further question?

12 THE COURT: Of course.

13 MR. COUGHLIN: You raised a few moments ago an
14 observation about the form of order. One of the things
15 that's troubling to our client is the fact that there's --
16 there doesn't seem to be any sequencing of the Committee's
17 right to participate. And I wonder whether Your Honor would
18 be open to addressing that issue in the form of -- we'll try
19 and negotiate it. But the Committee should not be permitted
20 to sit back and let the Debtor and the insurers brief
21 issues, and then decide to submit a brief as a sort of
22 omnibus surreply out of nowhere, which we can't reply to.
23 Would Your Honor be willing to consider some sort of
24 restriction or sequencing on their participation?

25 THE COURT: Well, they're -- once they're

1 intervenors, they're subject to the same rules that
2 everybody else is. There's no -- there's no ambush
3 provision. So I think that this is not -- it's not
4 something that needs to be addressed separately. I mean,
5 when there's a briefing schedule set up, there's a briefing
6 schedule set up, nothing would give the Committee, as an
7 intervenor, the right to swoop in and deny you -- deny any
8 of the insurers their due process right to be heard with
9 respect to issues raised. So I don't think that a bespoke
10 provision is necessary.

11 MR. COUGHLIN: Thank you.

12 THE COURT: All right.

13 MR. STANG: Your Honor, this is Mr. Stang --

14 THE COURT: So Arrowood's objection is going to be
15 overruled.

16 MR. STANG: Sorry.

17 THE COURT: That leaves us with, is it LMI?

18 MR. MEYERS: Yes, Your Honor. It's Bob Meyers
19 appearing on behalf of London Market Insurers. Can you hear
20 me okay?

21 THE COURT: Yes, I can. Thank you.

22 MR. MEYERS: Okay. Great. Several of the
23 comments that the Court made in response to Arrowood's
24 objection sort of alleviated certain of the fundamental
25 concerns underlying our objection. And that is, namely, in

1 the motion they didn't address anything -- the Committee
2 didn't address anything relating to the ostensible
3 parameters of its involvement, and it's just threw this
4 paragraph in their proposed order addressing it. And in
5 light of that, we didn't feel comfortable working with the
6 list of the ostensible limitations that appeared, to us, to
7 be exhaustive. The comments about the Court's expectations
8 in terms of the scope of the Committee's involvement are
9 more in line with what I think we proposed, frankly, in our
10 alternative language that we proposed. But we appreciate
11 the Court's earlier comments, and they go a long way to
12 alleviating the types of concerns that led to our objection.

13 THE COURT: All right. So translated, does that
14 mean you're withdrawing your objection?

15 MR. MEYERS: Well, no, not withdrawing the
16 objection, but we appreciate the Court's comments with
17 respect to how it -- how it envisions the Committee's
18 participation.

19 THE COURT: But it did not -- I'm looking at your
20 -- give me a moment. You, in paragraph 7 of -- in paragraph
21 7 of your objection, you requested a modification to
22 paragraph 2 of the proposed order.

23 MR. MEYERS: That's correct, Your Honor.

24 THE COURT: Yeah. I'm not inclined to agree with
25 you on that.

1 MR. MEYERS: Okay. Very well, Your Honor.

2 THE COURT: All right. All right. I think that's
3 all. There were a number of joinders, but I believe I've
4 deposed of them.

5 MR. STANG: (Indiscernible.)

6 THE COURT: Yes.

7 MR. STANG: I'm sorry, Your Honor. It's Mr.
8 Stang. I apologize for interrupting. I thought you were
9 moving on to another matter.

10 THE COURT: No. I'm just trying to find if any of
11 the other -- I think I've deposed of all of the joinders.

12 MR. STANG: Your Honor, I have one comment I'd
13 like to make regarding the statement made by the Arrowood
14 counsel, if I might.

15 THE COURT: Well, you might. I overruled him, so
16 if --

17 MR. STANG: No, I heard you.

18 THE COURT: -- you'd still like to make a
19 statement. That's fine.

20 MR. STANG: I heard you. I don't want to snatch
21 defeat from the jaws of victory. But he characterized the
22 Committee as essentially a Committee for the Plaintiffs'
23 lawyers, and I must take some exception to that. The
24 Committee was appointed --

25 THE COURT: I didn't -- I didn't hear that. I

1 heard Plaintiffs. I didn't hear Plaintiffs' lawyers.

2 MR. STANG: Well, for that matter -- all right.
3 For the Plaintiffs for that matter. The Committee was
4 appointed as the official committee in this case. And while
5 it is true that all of the members are abuse survivors,
6 their responsibility is as an official committee of all
7 unsecured creditors. We take that charge seriously, and we
8 do not (indiscernible) simply as a committee for tort
9 claimants. So I just wanted to make that clear.

10 THE COURT: Understood. All right. Is there
11 anything else that we need to do with respect to the
12 intervention motion? All right.

13 MR. BAIR: Your Honor.

14 THE COURT: Yes.

15 MR. BAIR: Your Honor, this is Jesse Bair from
16 Burns Bowen Bair, special insurance counsel for the
17 Committee. Just to confirm, Your Honor, will Your Honor be
18 entering the proposed order the Committee submitted or do
19 you need anything further from us on that end? Was my only
20 question.

21 THE COURT: I -- I intend to submit the order that
22 the Committee submitted.

23 MR. BAIR: Okay. Very good. Thank you for the
24 clarification.

25 THE COURT: All right. It should reflect, to the

1 extent that it doesn't already, it should reflect that the
2 objections and the joinders were overruled for the reasons
3 stated on the record of the hearing. All right. I think --
4 so just as a reminder, you'll send us a revised Word version
5 of that order. We have the orders on the retentions. We
6 need the orders on cash management and on the annuity
7 program. I think as we have been talking, my deputy has
8 already entered the four retention orders. We like to keep
9 up with you. So we can take care of the other orders
10 afterwards.

11 We still have pending out there, not to be
12 discussed today because it's not at all on the calendar, the
13 issues relating to the IAC, and I assume that the parties
14 are still continuing discussions with respect to that.

15 MAN: Your Honor --

16 MR. ROSENBLUM: Your Honor --

17 MAN: Go ahead, Ben.

18 MR. ROSENBLUM: Benjamin Rosenblum from Jones Day.
19 That's correct, Your Honor.

20 THE COURT: Okay. All right. Well, I think
21 that's all we have for today then. Thank you all for
22 assembling yourselves. As always, please reach out to my
23 clerk if there's anything that you need the Court's
24 assistance with. Above all, please stay safe during this
25 perilous time, and we'll look forward to talking to you all

1 next time. That concludes our hearing for today. Thank
2 you.

3 MAN: Thank you, Your Honor.

4 MAN: Thank you.

5 (Whereupon these proceedings were concluded at
6 10:45 AM)

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I N D E X

RULINGS

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management system Granted

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Gift annuity program Motion Granted

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Nixon Peabody Motion Granted

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
Hyde

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Date: December 10, 2020

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